



# BUDGET EXECUTION FLEXIBILITY

**Office of the Under Secretary of Defense (Comptroller)**

**FY 2005**



# **Budget Execution Flexibility**

## **Page**

- **DoD Appropriations Act Accounts**

– Reprogramming & Transfers - DoD Appropriations Act Accounts.....	3
– Transfer Authority .....	9
– Working Capital Funds Transfer Authority .....	11
– Transfer Authority to Other Agencies .....	12
– Transfer Accounts .....	13
– Emergencies and Extraordinary Expenses .....	18
– Section 3732 Authority .....	20
– Permanent Authority Unfunded Contract Authority .....	25

- **Military Construction Appropriations Act Accounts**

– Reprogramming - Military Construction Appropriations Act Accounts .....	27
– Emergency Military Construction .....	30
– Military Construction Contingency Authority and Funds .....	32
– Construction Projects Cost Variations .....	33
– Restoration or Replacement of Facilities Damaged or Destroyed .....	35
– Minor Construction .....	37
– Construction Authority under National Emergencies Act .....	39
– Foreign Currency Fluctuations, Construction, Defense .....	40
– Alternative Authority for Acquisition and Improvement of Military Housing .....	42

# **Reprogramming & Transfers**

## **DoD Appropriations Act Accounts**

- **Applies to appropriations in the annual DoD Appropriations Acts and Supplemental Appropriations Acts.**
- **Reprogramming provides flexibility to revise programs within an appropriation.**
- **Transfers provide a means of funding requirements by moving funds from one appropriation or legal subdivision to another.**
- **Movement of funds within an account are governed by agreements between DoD and the Congressional Authorization and Appropriations Committees. Transfers are also governed by specific statutory authority.**
- **Some actions may be approved by the Military Departments and Defense Agencies; others require approval by the Secretary of Defense; still others require prior approval by the congressional oversight committees.**
- **A recurring general provision in the annual Appropriations Acts states that “no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated, and in no case where the item for which reprogramming is requested has been denied by the Congress.”**
- **See the DoD Financial Management Regulation (DoD 7000.14-R), Volume 3, Chapter 6, and the OUSD Comptroller Home Page for additional reprogramming information and specific examples.**

# **Reprogramming & Transfer Actions** (continued)

**Reprogramming actions are changes in the application of financial resources. There are four vehicles that can be used to carry out reprogramming actions:**

- 1. Letter Transfers:** Letter transfers are used to process transfers directed by Congress in legislation.
- 2. DD-1415-1, Prior Approval (PA):** Prior approval of the congressional committees is required on an action involving the application of funds which:
  - Increases the procurement quantity of a major end item (unless specific congressional language allows additional quantities).
  - Affects a congressional interest item.
  - Uses general transfer authority (except for internal reprogramming).
  - Exceeds established thresholds.
    - a. **Military Personnel:** Increase of \$10 million or more in a budget activity.
    - b. **Operation and Maintenance:** Increase of \$15 million or more in a budget activity, depot maintenance sub-activity group or Defense Agency.

**Exception:** PA is required for all transfers in or out of the Private Sector Care activity group for the Defense Health Program Operation and Maintenance account.

# **Reprogramming & Transfer Actions** (continued)

- c. **Procurement: Effective in program year 2004:**  
Increase of \$20 million or more or a decrease of \$20 million or 20% in a P-1 line item, whichever is less.
- d. **RDT&E: Effective in program year 2004:**  
Increase of \$10 million or more or a decrease of \$10 million or 20% in an R-1 line, whichever is less.

— **New starts:**

- a. **Section 8106 of Public Law 108-287, the Department of Defense Appropriations Act, 2005, requires congressional oversight committees receive prior written notification of ALL program new starts. (Report language requires 30-day advance notification.)**
- b. **New Procurement program, subprogram, modification estimated to cost \$20 million or more within the first 3 years. Exceptions are safety modifications costing less than \$20 million, which may be initiated immediately after written notification is delivered to the congressional oversight committees.**
- c. **New RDT&E program, project, subproject estimated to cost \$10 million or more within the first 3 years.**

— **New line items: Effective in program year 2003:**

- a. **Establishes a new Procurement line item, subprogram, or modification of \$20 million or more.**
- b. **Establishes a new RDT&E program element, project, or subproject of \$10 million or more.**

# **Reprogramming & Transfer Actions** (continued)

- **Terminations:**

- a. Eliminates a Procurement program, subprogram, or modification of \$20 million or more.
- b. Eliminates an RDT&E program element, project, or subproject that is equal to the total amount of the program element, regardless of amount.
- c. Eliminates an RDT&E project or subproject within a program element of \$10 million or more.

**3. DD-1415-3, Internal: Reprogramming actions internal to DoD are audit-trail type actions processed within DoD and approved by the Comptroller. They:**

- Do not change the purpose or congressional intent.
- May use general transfer authority.
- May reprogram funds from Transfer accounts (Foreign Currency Fluctuations, Environmental Restoration, and Counter-drug).
- May increase procurement quantities when specific congressional language allows additional quantities within the appropriated funds.
- May document transfers identifying specific line items when a letter notification is being used to satisfy congressional or specific transfer notification requirements.

## **Reprogramming & Transfer Actions** (continued)

4. **Notification Letter:** Advance notification letters are transmitted directly by the DoD Component, with prior OUSD(C) coordination, to the congressional committee for notification of:
- Below threshold reprogramming for new programs or line items not otherwise requiring prior approval.
  - A new Procurement program, subprogram, project, or subproject whose total cost is less than \$20 million.
  - A new RDT&E program, subprogram, project, or subproject whose total cost is less than \$10 million.
  - Safety modifications whose total costs (both Procurement and RDT&E) are less than \$20 million for the entire effort.
  - Terminations falling within the below threshold reprogramming amounts for Procurement programs or subprograms costing less than \$20 million as long as the Procurement line item is not eliminated.
  - Terminations under \$10 million for any RDT&E program, project, or subproject as long as the program element is not eliminated.
  - Transfers identifying specific line items when a letter notification is being used to satisfy congressional or specific transfer notification requirements.

# Reprogramming Actions (continued)

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
<b>Number of Actions*</b>													
Prior approval actions	3	6	12	6	23	18	17	15	27	32	16	28	30
Notification actions	0	0	1	2	4	4	0	6	0	0	0	0	0
Internal actions	46	32	33	50	43	64	66	67	84	78	65	63	97
Total	49	38	46	58	70	86	83	88	111	110	81	91	127
<b>Associated Dollar Value</b> (all program years within the fiscal year)													
Prior approval actions	1,256	1,741	1,913	796	2,822	1,148	550	1,122	851	2,774	1,620	3,115	5,043
Notification actions	0	0	100	10	295	475	0	641	0	0	0	0	0
Internal actions	5,278	5,163	3,907	4,274	2,854	4,851	7,140	13,298	12,177	12,308	15,475	17,092	13,451
Total	6,534	6,904	5,920	5,080	5,971	6,474	7,690	15,061	13,028	15,082	17,095	20,207	18,494
<b>Budget Authority Changes</b>													
Mil Pers	2,875	-308	693	458	277	147	124	-23	15	917	4,793	-4	-1,419
O&M	-5,239	6,010	-611	-196	520	438	452	-2,147	-2,286	2,523	-5,133	6,510	4,890
Proc	2,833	-2,329	-529	977	-738	-825	-783	953	1,443	619	489	2,982	729
RDT&E	-528	22	-154	37	-207	82	371	941	-105	335	364	380	-170
Revolving	-240	-3,845	-400	-1,420	-150	-141	-132	240	905	-150	909	845	-5
MILCON	107	14	0	63	-2	14	0	1	17	-12	100	62	177
Fam Hsg	-31	0	0	-53	2	1	0	7	5	25	0	0	0
Other Govt	224	435	1,000	133	298	284	-32	29	6	-4,257	-1,521	-10,775	-4,202
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Unobligated Balance Changes</b>													
Mil Pers	0	0	0	28	27	14	0	-192	15	195	305	0	-224
O&M	2,264	56	192	0	1	-6	0	169	-161	455	8,461	5	5,811
Proc	50	103	-219	-6	-65	131	-47	17	97	141	-400	750	115
RDT&E	-39	10	-58	-22	38	-96	41	-31	36	27	21	-16	-52
Revolving	-2,275	-185	79	-50	0	1	6	45	0	-825	1,051	0	-3,773
MILCON	-90	-21	-15	-74	-60	-13	-13	49	-15	-15	-51	0	75
Fam Hsg	90	36	15	74	60	13	13	-49	15	15	51	0	0
Other Govt	0	0	6	50	0	-44	0	-7	13	7	-9,438	-740	-1,954
Total	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>General Transfer Authority</b>													
Appropriated	1,500	2,000	2,500	2,000	3,100	2,000	2,000	2,000	1,600	2,000	2,500	2,500	2,800
Used	719	1,522	1,065	657	2,339	1,604	1,847	1,134	1,341	1,562	1,979	2,220	2,354
Remaining	781	478	1,435	1,343	761	396	153	866	259	438	521	280	447
* An "Omnibus" reprogramming process was implemented in FY 1991, resulting in fewer prior approval and notification actions for a few years.													
FY 1999 was the last year that the notification reprogramming format was used .													



# **Transfer Authority**

- **Statutory authority is required to transfer funds between appropriations and between legal subdivisions within an appropriation. Defense Health Program, Inspector General, and Shipbuilding and Conversion, Navy are examples of appropriations with legal subdivisions. Some transfers are authorized by specific transfer authority that applies to a particular appropriation or to funds to be used for a particular purpose. In the absence of a specific transfer authority, General Transfer Authority (GTA) is used. General Transfer Authority was provided in the following:**
  - **Section 8005 of P.L. 108-287, the DoD Appropriations Act, 2005, and Section 1001 of P.L. 108-375, the Ronald W. Reagan National Defense Authorization Act for FY 2005, apply to FY 2005 funds.**
  - **Section 8005 of P.L. 108-87, the DoD Appropriations Act, 2004, and Section 1001 of P.L. 108-136, the National Defense Authorization Act for FY 2004, apply to FY 2004 funds.**
  - **Section 8005 of P.L. 107-248, the DoD Appropriations Act, 2003, and Section 1001 of P.L. 107-314, the Bob Stump National Defense Authorization Act for FY 2003, apply to FY 2003 funds.**

## **Transfer Authority** (continued)

- **FY 2005 GTA is used for transfers between FY 2005 appropriations, FY 2004 GTA is good for transfers between FY 2004 appropriations, and so on. The Department can currently transfer up to \$6.185 billion using FY 2005 GTA. (Amount increased by \$2.685 billion in FY 2005 Emergency Supplemental.) Transfer authority is available only for the fiscal years that the appropriation is available for new obligations (i.e., there can be no transfer from an expired appropriation).**
- **When GTA is used, the Secretary of Defense must determine that the action is in the national interest and Office of Management and Budget (OMB) must approve the transfer. GTA may not be used unless it is for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the Congress has denied the item for which the funds are requested.**
- **In addition to GTA, the most common types of transfer authority available are: Environmental Restoration, Iraq Freedom Fund, Foreign Currency Fluctuations, Drug Interdiction, Defense Working Capital Funds (Section 8006 of the annual DoD Appropriations Act), and special Title 10 or Title 50 authorities. When using these authorities, GTA is not used or affected.**

# **Working Capital Funds**

## **Transfer Authority**

- **The DoD Appropriations Act annually authorizes the transfer of cash balances in Working Capital Funds of the Department of Defense between such funds and between Working Capital Funds and the Foreign Currency Fluctuations, Defense (FCF, D) and Operation and Maintenance (O&M) appropriation accounts.**
- **Transfers between Working Capital Funds and FCF,D or O&M accounts require approval by the Secretary of Defense and OMB and prior approval by Congress.**



**Approval**



**Approval**



**Notification**

# Transfer Authority to Other Agencies



- **Transfers may be made to other agencies only when authorized by law.**
- **Section 2215 of Title 10, United States Code provides:**
  - “...funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional committees specified in sub-section (b) a certification that making those funds available to such other department or agency is in the national security interest of the United States.”**

# **Transfer Accounts**

- **Transfer accounts are characterized by centralized budgeting with all funding transferred to other appropriations for execution. This approach gives program managers maximum execution flexibility and is generally used for specific programs that are subject to significant changes in requirements during execution. Currently, transfer accounts are used by the Department to finance some of the costs of domestic environmental restoration programs, drug interdiction and counter drug programs, and military operations in Iraq and the War on Terrorism (Iraq Freedom Fund).**
- **Transfers are made using transfer authority unique to the specific transfer account; they do not use DoD's limited General Transfer Authority.**

# **Transfer Accounts** (continued)

## **Foreign Currency Fluctuations:**

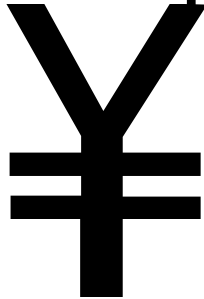
- **The purpose of the Foreign Currency Fluctuations, Defense (FCF,D) appropriation is to eliminate during execution the effects of fluctuations in the value of selected foreign currencies on DoD's operating accounts.**
- **Funds in the FCF,D are available for transfer to the Components' Operation and Maintenance (O&M) and Military Personnel (MILPERS) appropriations to finance an increase in obligations because of a decline in the foreign currency purchasing power of the U.S. dollar. Similarly, foreign currency gains are transferred from the operating accounts to the FCF,D.**
- **To assist in maintaining adequate funds in the FCF,D appropriation, the Department has limited authority to transfer excess unexpired and expired O&M and MILPERS unobligated balances into the FCF,D.**
- **Example of Use:**
  - **The budget exchange rate for Japan in FY 2003 was 135.44 yen per U.S. dollar. However, throughout the fiscal year the market exchange rate ranged from a low of 110.78 to a high of 124.53 yen per U.S. dollar. For the year, the overall unfavorable rates for the yen produced a net foreign currency loss and transfer out of the FCF,D of \$111.5 million.**



# **Transfer Accounts** (continued)

## **Foreign Currency Fluctuations** (continued):

- **Example of Use:**



- However, in FY 2001 the budget exchange rate for the Japanese Yen was 122.13 per U.S. dollar while the market rate ranged from 107.5 to 126.8 per U.S. dollar. Overall the market rates were favorable, resulting in a foreign currency gain and transfer into the FCF,D of \$29.8 million.

# **Transfer Accounts** (continued)

## **Counterdrug Programs:**

- **DoD executes counterdrug programs in concert with the overall National Drug Control Strategy as established by the Office of National Drug Control Policy (ONDCP).**
- **The Drug Interdiction and Counterdrug Activity, Defense appropriation is a centrally managed fund from which resources are transferred to the Components to execute in their various accounts (i.e., O&M, RDT&E, Procurement, and Reserve Personnel appropriations).**
- **Example of Use:**  
**In FY 2005, \$1,147.827 million will be transferred from the Drug Interdiction and Counterdrug Activity, Defense, appropriation to various Defense appropriations.**



# **Transfer Accounts** (continued)

## **Environmental Restoration:**

- **The purpose of the 5 environmental restoration appropriations (Army, Navy, Air Force, Defense-wide, and Formerly Used Defense Sites) is to finance the domestic environmental restoration program (excluding Base Realignment and Closure sites) for which the Department has statutory responsibility.**
- **These funds finance the identification, investigation, and cleanup of past contamination from hazardous substances and wastes; correction of other environmental damage; detection and clean up of unexploded ordnance; and demolition and removal of unsafe buildings, structures, and debris.**
- **Example of Use:**
  - » **In FY 2005, \$1,352.0 million will be transferred from the 5 Environmental Restoration transfer accounts to various Defense appropriations.**



# **Emergencies and Extraordinary Expenses Limitation**

- **10 U.S.C. 127 (a) provides to the Secretary of Defense, the Secretaries of the Military Departments, and the Inspector General of the DoD, within the limitation of appropriations made for the purpose, the authority to provide for any emergency or extraordinary expense that cannot be anticipated or identified.**
- **10 U.S.C. 127 (c) limits the obligation and expenditure of funds for emergencies and extraordinary expenses to \$500 thousand unless the Secretary of Defense has notified the DoD authorization and appropriations oversight committees of the intent to obligate funds in excess of \$500 thousand. Upon congressional notification, the Department is required to wait for a period of five days for those obligations greater than \$500 thousand but not in excess of \$1 million, and for 15 days for obligations in excess of \$1 million. The waiting period is waived if the Secretary of Defense determines that the national security objectives of the U.S. will be compromised by the delay in the obligation of funds.**
- **Within the O&M appropriation for each of the Military Departments, Defense-Wide, and the Office of Inspector General, an amount is specified as a Limitation on the emergencies and extraordinary expenses that may be incurred.**

# **Emergencies and Extraordinary Expenses Limitation**

- **Unless otherwise prohibited by law, these funds can be used for expenses not otherwise authorized to be paid from Defense appropriations. They may be used on the approval of the Secretary of the respective Military Department, the Inspector General for the OIG appropriation, or the Secretary of Defense in the case of the Defense-wide appropriation.**
- **10 U.S.C. 127 requires the Secretary of Defense to submit an annual report of expenditures under these Limitations to the congressional defense committees.**
- **Example of Use:**



» In addition to authorizing the use of funds for confidential military purposes, this authority also covers representation allowances.

## **Section 3732 Authority (41 U.S.C.11.)**

- **Section 3732 of the Revised Statutes (41 U.S.C.11.), commonly referred to as the Feed and Forage Act, allows the Military Departments to incur obligations in excess of available appropriations for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.**
- **These authorities require congressional notification and *do not permit actual expenditures* until Congress provides an appropriation of the requested funds.**
- **These authorities apply to the Military Personnel (Title I) and Operation and Maintenance (Title II) appropriations, Revolving and Management Funds (Title V), and the Defense Health Program (Title VI).**

## **Section 3732 Authority (41 U.S.C.11.)** (continued)

- **Includes:**
  - **Fuel - gasoline, diesel fuel, kerosene, coal, fuel, oil, gas, or other fuels used in vehicles, boats, aircraft, stationary engines, or for production of utilities.**
  - **Medical and Hospital Supplies - drugs, medicines, medical instruments, protective clothing, linens, medical equipment, hospital beds, and other hospital supplies.**
  - **Transportation - commercial or government movement of persons and property; maintenance and repair of vehicles, aircraft and boats of all types; operation of ports and terminal facilities.**
  - **Quarters - maintenance, rehabilitation and operation of barracks and Visitor's Quarters, furniture and equipment for barracks and Visitor's Quarters, and tents.**
  - **Clothing - organizational clothing and equipment worn by the individual.**
  - **Subsistence - food, water, food preparation/serving, and contract feeding.**
- **Excludes (for example):**
  - **Non-emergency expenses in the following categories:**
    - **Civilian Pay**
    - **Training**
    - **Facilities sustainment, restoration and modernization**
    - **Recruiting and Advertising**
    - **Base support, non-medical supplies, and Depot Maintenance**

## **Section 3732 Authority (41 U.S.C.11.)** (continued)

- **Example of Use:**



- » **On January 29, 1991, President Bush exempted the Military Personnel and Operation and Maintenance appropriations from apportionment to cover increased pay and allowances and operations costs for combat operations in the Middle East. This permitted the DoD to obligate funds for these costs at a higher rate in anticipation of supplemental funding in applicable appropriations.**
- » **Subsequently, on February 12, 1991, the Secretary of Defense authorized the use of Section 3732 deficiency authority to fund these increased costs. This permitted the Military Departments to incur obligations in excess of funds appropriated.**

## **Section 3732 Authority (41 U.S.C.11.)** (continued)

- **Exemption of appropriations from apportionment and Section 3732 deficiency authority are separate and distinct authorizations. Exemption from apportionment does not permit obligation of funds in excess of availability; Section 3732 does.**
- **It was last invoked on September 16, 2001 after the terrorist attacks on America. However, the authority to incur additional obligations was not utilized.**

## **Section 3732 Authority (41 U.S.C.11.)** (continued)

### **10 U.S.C. 2201(c) Application to Military Personnel**

- **Section 2201(c) of Title 10 U.S.C. would permit obligations to be incurred for military pay and allowances for the increased number of members of the armed forces on active duty beyond the number for which funds are provided in the appropriation acts.**
- **This would apply primarily to stop loss programs and reserve mobilization. However, this provision is of limited value since it provides only for obligations and not for expenditures (payments to members).**



# **Unfunded Contract Authority**

- **Unfunded contract authority is used on a recurring basis in certain revolving funds, mainly the Defense Working Capital Funds, to maintain required levels of inventory by executing contracts and purchase orders in such amounts as to accommodate procurement and administrative lead times, rising inflation, other stockage requirements and capital costs to satisfy customer orders in a timely manner.**
- **10 U.S.C. 2210(b) provides that “obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistent with planned operations for the next fiscal year.”**



- **The outstanding balance of unfunded contract authority at the end of FY 2004 was \$20,929 million.**

# **Unfunded Contract Authority**

(continued)

- **Unfunded contract authority obligations are liquidated by reimbursements from customer orders or appropriations.**
- **10 U.S.C. 2685(c) provides contract authority for construction and improvement of commissary store facilities from amounts collected as commissary surcharges.**



- **10 U.S.C. 2208 provides that a contract for the procurement of a capital asset financed by a working capital fund may be awarded in advance of the availability of funds in the working capital fund.**

# **Reprogramming**

## **Military Construction Appropriation Act Accounts**

### **DoD Component Action**

**DoD Financial Management Regulation 7000.14 Volume 3, Chapter 7 requires prior approval of the Office of the Under Secretary of Defense (Comptroller) for the following:**

- **Actions requiring prior Committee approval:**
  1. **For any increase exceeding 25 percent of the reprogramming base or \$2.0 million, whichever is less, to military construction projects, family housing new construction projects, or family housing improvement projects (exceeding \$2.0 million base value). Once approved, the revised baseline becomes the new reprogramming base to measure whether future reprogrammings are considered below or above threshold. (Note: The authorization threshold is \$3.0 million vice \$2.0 million used by the appropriations subcommittees and only requires a notification and a waiting period of 21 days.)**
  2. **For any increase, regardless of percentage or dollar value, to a project or account (including the sub-elements of an account) that has been previously reduced in scope by the Congress in acting on the appropriation request.**

# **Reprogramming**

## **Military Construction Appropriation Act Accounts**

(continued)

- 3. For any emergency construction project to be performed under 10 U.S.C., Section 2803.**
- 4. For any restoration or replacement of damaged or destroyed facilities to be undertaken with Military Construction funds under 10 U.S.C., Section 2854.**
- 5. For any acquisition of interests in land under 10 U.S.C., Section 2672a.**
- 6. For any family housing relocation project to be accomplished under 10 U.S.C., Section 2827.**
- 7. For any National Guard and Reserve major construction project, regardless of amount, that was not among those justified to and approved by the Congress, or for an increase to an appropriated project that exceeds 25 percent of the reprogramming base, or \$2.0 million, whichever is less.**
- 8. For any amount above that which is appropriated for unspecified minor construction.**

# **Reprogramming**

## **Military Construction Appropriation Act Accounts**

(continued)

9. For any amount above that which is appropriated for architectural and engineering services and construction design.

- **OSD Action**

**Obtain prior approval of House and Senate Committees on Appropriations. Notification is required to the Authorization Committees and is the responsibility of the applicable Component Secretary or the Defense Agency Director.**

# **Emergency Military Construction**

- **10 U.S.C. 2803 provides the Secretary of Defense and each of the Secretaries of the Military Departments with authority of \$45 million annually to carry out military construction projects not otherwise authorized by law if the Secretary concerned determines (1) that the project is vital to national security; and (2) that the requirement is so urgent that deferral of the project for inclusion in the next National Defense (Military Construction) Authorization Act would be inconsistent with national security.**
- **Each decision to use this authority requires that the Secretary concerned submit a written report to the appropriate committees of Congress including:**
  - **Justification for the project,**
  - **Justification for the use of this authority,**
  - **The estimated cost of the project, and**
  - **The source of funds to be used to finance the project (i.e., from savings or from lesser priority military construction projects).**
- **Projects initiated under this authority may not be carried out until 21 days have elapsed following receipt of notification by the congressional committees, or the end of the seven-day period beginning on the date on which a copy of the electronic version is provided.**

## **Emergency Military Construction** (continued)

- **Example of Use:**

**This authority was used in FY 2004 to do the site work for the placement of temporary billeting, administrative facilities and motor pools at Fort Stewart, Georgia that was urgently needed for the stand-up of new Units of Actions as the first step in the Army's transformation of its current force.**

# **Military Construction**

## **Contingency Authority and Funds**

- **10 U.S.C. 2804 and the annual Military Construction Appropriation Acts contain authority which permits the transfer of funds from the Military Construction, Defense-wide appropriation to other appropriations of the Department of Defense which are available for military construction. A project financed under this authority requires a determination that deferral of the project for inclusion in the next National Defense (Military Construction) Authorization Act would be inconsistent with national security or national interest.**
- **Use of this authority requires approval by the Secretary of Defense and notification of the House and Senate Authorization and Appropriations Committees. In addition, there is a statutory waiting period of 21 days following congressional notification before funds may be obligated for any project approved under this authority, or the end of the 14-day period beginning on the date on which an electronic version is provided.**
- **Example of Use:**
  - In FY 2005, \$3.1 million was approved by the Secretary of Defense to construct a Psychiatric Ward Addition to the Detainee Hospital at Guantanamo Bay, Cuba.**



# **Construction Projects Cost Variations**

- **10 U.S.C. 2853 authorizes the Secretary of Defense and the Secretaries of the Military Departments to increase the cost authorized for a construction project above the amount appropriated if the Secretary concerned determines: (a) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (b) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress. Military construction projects, family housing new construction projects, or family housing improvement projects (exceeding \$2.0 million base value) may be increased up to 25 percent over the amount originally approved, or 200 percent of minor construction (\$3 million), whichever is the lesser, at the discretion of the Secretary concerned.**
- **The Secretary of the Component or the Director of the Defense Agency must notify the House and Senate Authorization Committees if the project is decreased by 25 percent of the amount approved for the project.**
- **Increases in excess of the above amounts can be incurred after: approval by the Secretary concerned; notification to the House and Senate Authorization and Appropriations Committees, including the reasons for the cost increase; and, 21 days have elapsed from the date of submission.**
- **Such increases are to be funded from savings from other construction projects. Those exceeding the 25 percent/\$2 million limitations are subject to prior approval reprogramming by the Committees on Appropriations.**

## **Construction Projects Cost Variations** (continued)

- **In no event may the total amount authorized for an appropriation for the active forces and Defense-wide be exceeded because of cost variations. An exception is the NATO Security Investment Program (NSIP) appropriation which may be increased by not more than 25 percent of the amount appropriated.**
- **Example of Use:**  
**In FY 2005, this authority was used to accommodate higher than anticipated costs associated with the construction of a Refueling Apron project at Eielson Air Force, Alaska. Unforeseen increases in the cost of steel, concrete, lumber, and transportation costs results in the higher costs. A prior approval congressional reprogramming action was required since the project cost 27 percent more than the amount originally approved by Congress.**

# **Restoration or Replacement of Facilities Damaged or Destroyed**

- **10 U.S.C. 2854 provides the Secretary of Defense and the Secretaries of the Military Departments with authority to repair, restore or replace facilities that have been damaged or destroyed (normally as a result of natural disaster).**
- **Restoration/replacement projects can be undertaken only after the Secretary concerned notifies the House and Senate Authorization and Appropriations Committees of that decision, the justification for the project and use of the authority, the estimated cost of the project, and the source of funds for the project. The project may then be carried out only after the end of a 21-day waiting period following receipt of notification by the committees or the end of the seven-day period beginning on the date on which a copy of the electronic version is provided.**
- **Funds to finance such construction must be reprogrammed from savings or from lower priority projects. Such reprogramming requires the prior approval the House and Senate Committees on Appropriations.**

# **Restoration or Replacement of Facilities Damaged or Destroyed** (continued)

- **Example of Use:**



- » **In FY 2003, this authority (10 U.S.C. 2854) was used for a \$2.4 million project to restore a Dental Clinic/Field and Weapons Training Company Headquarters facility at Camp Pendleton, California. This facility suffered extensive fire damage in December 2000. The restoration of the facility was required to ensure adequate dental care was available to active duty personnel assigned to this location.**

## **Minor Construction**

- **10 U.S.C. 2805 provides the Secretary of Defense and Secretaries of the Military Departments authority for unspecified minor construction projects which are not otherwise authorized by law and that do not exceed \$1.5 million (\$3 million in the case of projects intended solely to correct life, health, or safety deficiencies).**
- **Appropriations available for Military Construction may be used for such construction. In addition, funds available from appropriations for Operation and Maintenance (O&M) may be used for any project costing not more than \$750,000 (\$1.5 million in the case of projects intended to correct life-threatening, health-threatening, or safety-threatening deficiencies).**

## **Minor Construction** (continued)

- **The legislation requires that projects costing \$750,000 or more be approved by the Secretary concerned. Upon approval, the Secretary concerned must notify the Authorization and Appropriations Committees of the Service Secretary's decision, the justification for the project and the estimated cost of the project. The project may then be carried out only after the end of a 21-day waiting period following receipt of the notification by the committees or 14-day period for electronic notification.**
- **An annual report is required to be submitted to the Authorization and Appropriations Committees of the Senate and House on the use of this authority.**
- **Example of Use:  
In FY 2004, the Air Force used \$1.4 million of their Minor Construction funds to construct a communication facility at Pope Air Force Base, North Carolina.**

# **Construction Authority Under National Emergencies Act**

- **10 U.S.C. 2808 provides the Secretary of Defense with military construction authority in the event of a declaration of war or declaration by the President of a national emergency requiring use of the armed forces.**
- **Under this authority, the Secretary of Defense may, without regard to any other provision of law, undertake military construction necessary to support such use within any available unobligated Military Construction funds (including funds available for Family Housing).**
- **The Secretary of Defense is required by the statute to notify the House and Senate Authorization and Appropriations Committees of any construction undertaken pursuant to this authority.**
- **Authority terminates at the end of the war or national emergency.**
- **Example of Use:**  
**The Air Force used this authority for \$26.7 million for two parking aprons at a classified location.**

# **Foreign Currency Fluctuations, Construction, Defense**

- **Section 121 of the FY 1987 Military Construction Appropriations Act provides that funds in the Foreign Currency Fluctuations Construction, Defense, (FCF,C,D) account are available for transfer to the Military Construction and Family Housing appropriations (for Defense activities in foreign countries) to finance increased obligations due to downward fluctuations in the currency exchange rates (from those used in budget preparation).**
- **The FCF,C,D account is financed by transfers into the account from unobligated balances in expired family housing and military construction accounts and from savings in those accounts.**
- **Funds must be transferred into this account when upward fluctuations in currency exchange rates result in substantial net gains in these appropriations.**
- **The intent is both to shield operating programs from significant losses and to recoup significant gains to prevent windfall increases from being used to finance what might be low priority programs, or programs which were not reviewed and approved by the Congress.**
- **The Secretary of Defense has authority to approve these transfers. An annual report to the Congress on all transfers made to or from this appropriation is required.**



# **Foreign Currency Fluctuations, Construction, Defense**

(continued)

- **Example of Use:**



» **In the Army Family Housing Operation and Maintenance account during FY 2004, actual foreign currency exchange rates resulted in losses of \$114.0 million against the budgeted foreign currency exchange rate. The majority of the losses were due to unfavorable exchange rates for the U.S. dollar against the Euro, the Japanese yen, the South Korean won, and the British pound. The \$114.0 million loss was paid for by transfers from the Foreign Currency Fluctuations, Construction, Defense account -- thereby allowing the program to execute at the budgeted level.**

# **Alternative Authority for Acquisition and Improvement of Military Housing**

- **The FY 1996 National Defense Authorization Act provided the Department of Defense with new authorities designed to attract private sector capital, expertise and management to speed the revitalization of military housing. The authorities were codified in 10 U.S.C., Chapter 169, Subchapter IV, Alternative Authority for Acquisition and Improvement of Military Housing, and include:**
  - **direct and guaranteed loans**
  - **rental income and occupancy guarantees**
  - **leases (existing or build-to-lease)**
  - **investments in non-governmental entities (i.e., limited partnerships, stock/bond ownership)**
  - **differential lease payments**
  - **conveyance or lease of existing government property and facilities**

**Congress also established two new funds to finance projects using these authorities: the Family Housing Improvement Fund and the Military Unaccompanied Housing Improvement Fund.**

# **Alternative Authority for Acquisition and Improvement of Military Housing** (continued)

- **10 U.S.C. 2883 and the annual Military Construction Appropriation Acts contain authorities which permit the transfer of funds from the Military Departments' Family Housing Construction appropriations to the Family Housing Improvement Fund. A transfer may be made only after the end of the 30-day period beginning on the date the Under Secretary of Defense (Comptroller) submits written notice of, and justification for, the transfer to the appropriate committees of Congress, or the end of the 14-day period beginning on the date on which a copy of the electronic version is provided. (The authority to transfer funds into the Military Unaccompanied Housing Improvement Fund has been omitted in recent Military Construction Appropriations Acts due to lack of activity requiring the use of the authority. The DoD may request that Congress reinstate the authority in the future.)**

# **Alternative Authority for Acquisition and Improvement of Military Housing** (continued)

- **Example of Use:**



- » **In FY 2004, the Air Force transferred \$6.8 million into the FHIF to fund a direct government loan to provide 1,200 privatized housing units for families at Little Rock AFB, AR, for a period of 50 years. This project would have cost \$111.5 million in equivalent military construction cost. Therefore the Air Force realized better than 18:1 leverage on its investment of \$6.8 million.**

# Alternative Authority for Acquisition and Improvement of Military Housing (continued)

- **Example of Use:**



- » **In FY 2003, the Marine Corps invested \$26.5 million in a limited partnership to provide 1,718 privatized family housing units at MCAS Beaufort/MCRD Parris Island, South Carolina. The Marine Corps realized a leverage ratio of 4.5:1 on its investment. All 1,718 units will remain available to military families on a first right of refusal basis for the 50-year term.**
- » **The Army and Navy have also awarded similar projects to privatize family housing at a number of their installations. As of February 2005, the Services have awarded 30 family housing privatization projects and have achieved an average leverage of 11:1 on their investments.**